IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5331 OF 2006

Shri Arackal Joseph Chacko ..Petitioner

Vs.

Commandant Air Defence & Ors. ..Respondents

Mr.S.S.Kulkarni for the petitioner

Mr.Ramesh Dube Patil i/b Ajay Mishra & Co. for respondent no.1

Mr.Mista Muluni i/b A.C.Mishra for respondent no.2

CORAM : A.P.DESHPANDE, J

DATED : 20TH NOVEMBER, 2006

P.C.:

1. This petition is directed against the order passed by the Trial Court dt.11.8.05. The present petitioner was running a STD booth alongwith the facility for xerox etc. in the premise owned by the respondents. The petitioner being a apprehensive of dispossession at the hands of respondents, filed a regular civil suit for declaration and perpetual injunction and also moved an application claiming temporary injunction.

2. Perusal of the impugned order reveals that the court directed notice to be issued on temporary injunction application and during the course of the pending proceedings, the learned counsel for the defendant nos.1 and 2 assured the court that respondent nos.1 and 2 will maintain the statusquo. Accordingly learned counsel for the respondent nos.1 and 2 made a statement that defendant no.1 and 2 will maintain statusquo till filing of the written statement whereas it is the case of the petitioner that an undertaking was given that the statusquo will be maintained and that undertaking was extended by the court orally. There is no order passed in writing nor there is any undertaking given in writing. In this fact situation the grievance of the petitioner is that he came to be dispossessed from the premises on 1.1.2005. Further grievance is to the effect that his belongings are also not returned to him and are still in possession of the defendants. In this fact situation, an application was moved before the trial court for initiation of contempt proceedings, on the ground of breach of an undertaking. The trial court has rejected the application by holding

that the undertaking was given by the advocate for defendant nos.1 and 2 and the said undertaking was specifically given until filing of the say and written statement which came to be filed on 18.12.2004 and therefore, in the opinion of the trial court, no such undertaking was in force on the date on which the petitioner complains of being dispossessed.

3. Perused the order. No interference is called for. Further if the grievance of the petitioner is about his dispossession pending the suit, it shall be open for the petitioner to move the appropriate application before the trial court making appropriate prayers including the one for damages. With these observations, writ petition is summarily dismissed.

(SHRI A.P.DESHPANDE, J)